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FILED
FEB 19 2010
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

No. 82225-5

SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF PORT ANGELES,

Respondent,

v.

OUR WATER-OUR CHOICE and
PROTECT OUR WATERS

Petitioners,

v.

WASHINGTON DENTAL SERVICE
FOUNDATION, LLC,

Respondent.

MOTION TO ADD ADDITIONAL AMICI
CURIAE TO EXISTING AMICI CURIAE
BRIEF

CLERK

BY RONALD R. CARPENTER

10 FEB 19 AM 11:06

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

This is not a motion to file an additional amicus brief but merely to allow
addition amici to be added to an already existing brief, as will be explained below.

Motion to Add Additional Amici Curiae
To Existing Amici Curiae Brief - 1

FILED AS
ATTACHMENT TO EMAIL

JAMES ROBERT DEAL
4130 166th Pl SW
Lynnwood, WA 98037-9027
Phone: (425) 771-1110
Fax: (425) 776-8081

ORIGINAL

1
2 A. IDENTITY AND INTEREST OF AMICI CURIAE

3 The proposed Amici Curiae are Audrey Adams, Linda Martin, Bill Osmunson
4 DDS, MPH, Gerald H. Smith MD, and Fluoride Class Action. These amici were added
5 to the 30-page brief entitled

6 Amici Curiae Brief of International Academy of Oral Medicine And Toxicology,
7 Oregon Citizens For Safe Drinking Water, Fluoride Action Network,
8 Washington Action For Safe Water, Whidbey Environmental Action Network,
9 Audrey Adams, Linda Martin, Bill Osmunson DDS, MPH, Gerald H. Smith MD,
10 and Fluoride Class Action,

11 referred to herein as the "IAOMT Brief" without a motion being filed in advance or at
12 the same time as the Amici Brief was submitted.

13 This motion is being filed after the fact to request that these individual and this
14 group be allowed to join said Amici Brief as amici.

15 The interests of each proposed amicus are set forth in the attached Revised
16 Appendix A.

17 B. APPLICANTS' FAMILIARITY WITH THE ISSUES AND ARGUMENT
18 PRESENTED BY THE PARTIES

19 An advisor to the Applicants has been following this case since the time it was
20 filed in superior court and has read all of the briefs filed in Superior Court, the Court of
21 Appeals Division II, and the Supreme Court. Therefore the Applicants are well familiar
22 with the issues and arguments presented by the parties.

23 C. ISSUES TO WHICH THE AMICI CURIAE BRIEF WILL BE DIRECTED

The Amici Curiae Brief addresses Issues 1 to 5 presented in the Petition for
Review at 1-2.

Motion to Add Additional Amici Curiae
To Existing Amici Curiae Brief - 2

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3 D. APPLICANTS' REASON FOR BELIEVING THAT ADDITIONAL
4 ARGUMENT IS NECESSARY

5 The decision of the Trial Court and the Court of Appeals Division II means that
6 the citizens of Port Angeles have lost the right of initiative and referendum with respect
7 to the to water medication and water fluoridation issue. There is a long tradition for
8 allowing citizens to vote up or down for fluoridation.

9 Across the country, voters are losing the right to vote on fluoridation. For
10 example, fluoridation was recently made mandatory in California. This is a dangerous
11 trend. It limits the right that the people have under the First Amendment to petition their
12 government.

13 This Amici Curiae Brief focuses on Issues 1-5 from the perspective that the
14 Initiatives do not just regulate additives or contaminants in local public water supplies
15 but rather that they prohibit or limit putting drugs in local public water supplies.

16 The Amici Curiae Brief addresses some of the reasons why it is impractical to
17 meet prescription (legend) drug laws when manufacturing and dispensing prescription
18 (legend) drugs in public water supplies. It then discusses some of the prescription
19 (legend) drug laws now being violated by the City when it serves the prescription
20 (legend) drug City Fluoridated Water through its municipal water supply with the intent
21 to treat dental decay.

22 E. FURTHER CONSIDERATIONS

23 Dr. Osmunson and Dr. Smith had asked to be a part of the original proposed 20-
page amicus filed January 29, and entitled

Motion to Add Additional Amici Curiae
To Existing Amici Curiae Brief - 3

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1
2 Amici Curiae Brief of International Academy of Oral Medicine and Toxicology,
3 Oregon Citizens for Safe Drinking Water, and Fluoride Action Network
in Support Of Petitioners,

4 but due to an editing error, they were omitted from that brief and the motion to allow
5 that brief to be submitted.

6 When the revised 30-page "IAOMT Brief" was prepared, their names were
7 added to that brief, however, no motion to allow them to join that brief was filed. This
8 was an error on my part. I ask the Court to excuse this error. The opposing party and
9 amici were not prejudiced by this error, which affected merely the amici who would be
10 "sponsoring" the brief and not the content of the brief.

11 Regarding Audrey Adams, Linda Martin, and Fluoride Class Action, these
12 individuals were proposed amici curiae for another proposed 20-page brief which was
13 filed on January 29, 2010. A motion was made that their brief be accepted, and that
motion was denied.

14 However, in a conversation I had with Commissioner Walter Burton, I
15 understood that it was not the content of the denied briefs which was the basis for the
16 denial and that any subject matter from any of the five briefs could be included,
provided that the new brief be not more than 30 pages in length.

17 Audrey Adams, Linda Martin, and Fluoride Class Action still wanted to be part
18 of the condensed brief, so they were added as amici, however, a new motion to allow
19 them to be amici should have been made. Some of the subject matter of their brief was
20 included in the combined 30-page brief.

21 This was an error on my part, and I ask the Court to excuse this error. The
22 opposing party and amici were not prejudiced by this error, which affected merely the
amici who would be "sponsoring" the brief and not the content of the brief.

23 Motion to Add Additional Amici Curiae
To Existing Amici Curiae Brief - 4

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2 Therefore, it is requested in this motion that Audrey Adams, Linda Martin, Bill
3 Osmunson DDS, MPH, Gerald H. Smith MD, and Fluoride Class Action be allowed to
4 be amici for this combined and condensed "Amicus Brief of LAOMT et al."

5 F. NOTICE OF RESIGNATION

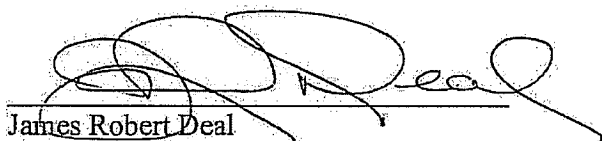
6 Lynn Lohr and Oregon Citizens for Safe Drinking Water have withdrawn as
7 amici.

8 Dated this 19th day of February, 2010.

9 Respectfully submitted,

10 JAMES ROBERT DEAL PS

11 By:

12 
James Robert Deal
13 WSBA No. 8103
14 Attorneys for Amici
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1
2 CERTIFICATE OF SERVICE

3 I certify that on the 19th day of February, 2010, I caused a true and correct copy of this
4 certificate and the Motion to Add Additional Amici Curiae To Existing Amici Curiae
Brief to be served on the following:

5 Counsel for Washington Dental Service Foundation, LLC, and Water Fluoridation
6 Science Committee:

7 Roger Pearce/P. Steven DiJulio
8 Foster Pepper PLLC
1111 Third Ave., Ste. 3400
Seattle, WA 98101-3299
By first class mail and by e-mail to pearr@foster.com

9 Counsel for the City of Port Angeles:

10 William Bloor
11 Port Angeles City Attorney
321 E 5th Street
12 Port Angeles, WA 98362
By first class mail and by e-mail to wbloor@cityofpa.us

13 Counsel for Petitioners:

14 Gerald Steel
15 Gerald Steel PE
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16 Olympia WA 98502
By first class mail and by e-mail to geraldsteel@yahoo.com

17 Counsel for Association of Washington Cities:

18 Sheila M. Gail
19 Association of Washington Cities
1076 Franklin St. SE
20 Olympia WA 98501-1346
By first class mail and by e-mail to sheilag@awcnet.org

21
22
23 Motion to Add Additional Amici Curiae
To Existing Amici Curiae Brief - 6

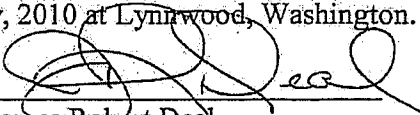
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Counsel for City of Forks:

William Rodney Fleck
City of Forks
500 E. Division St.
Forks WA 98331
by first class mail and by e-mail to rod.f.forks@centurytel.net

Dated this 19th day of February, 2010 at Lynnwood, Washington.


James Robert Deal

23

Motion to Add Additional Amici Curiae
To Existing Amici Curiae Brief - 7

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REVISED APPENDIX A TO MOTION TO ADD CURIAE

AUDREY ADAMS, RENTON, WASHINGTON:

January 14, 2010

To the Washington Supreme Court:

This letter regards the case of the City of Port Angeles v. Our Water-Our Choice and Protect Our Waters, v. Washington Dental Service Foundation LLC, Case No. 82225-5.

My son Kyle Adams, age 24, has autism and suffers from pain, severe headaches and other symptoms when exposed to chemicals in his food, in the air or in his water. He works as an office assistant at Highline Community College, but cannot do his job after chemical exposures. He must be protected from such exposures, but water is the hardest to avoid.

His sensitivity to chemicals is so great that he cannot drink fluoridated water and cannot shower in fluoridated water without suffering a severe headache that lasts for hours. Someone wearing perfume will cause his heart rate to skyrocket (demonstrated by accident in the doctor's office). A tiny bit of yellow dye #5 in white cake will cause him to scream and run as if pursued by killer bees. Preservatives will cause him to break out in a red sweat and will guarantee a wild ride for all those around him. His doctor-ordered chemical and dietary avoidance regimen is complex, time-consuming and expensive, but necessary.

After exposure to chemicals, including fluoridated tap water, the intensity of his pain creates behaviors that make him appear many times more autistic—because he cannot talk, cannot listen, cannot cope—until the pain subsides. After exposure, his wild and erratic behavior makes him appear violent, but his normal self is a very gentle man, happy in his home, loving his job, enjoying playing the piano and showing tons of love to his family.

Even with the use of a chlorine filter on the showerhead, Kyle's headache, body pain and reduced function follow shortly after the shower. Moving his shower to the evening moves the pain to the evening and into the night, with screams, sweating, rapid heartbeat and violent bed-pounding, shaking our house like an earthquake. Years of out-of-town visits to locations that do not fluoridate, but do chlorinate (with no chlorine filter) have shown that these severe reactions are not present with chlorine alone.

Providing fluoride-free water is very expensive and labor-intensive. My tap water costs me \$0.0042 per gallon—but fluoride-free water at the

grocery store is \$0.45/gal to refill jugs or \$1.00 to \$3.00 per gallon off the shelf—a mind-blowing 100-700 times more expensive!

My son's greatest impediment to a livable life is pain, not autism. Similar reactions to chemicals are very common in the autistic population and, unfortunately, those that are the most out of control have parents who do not yet know that their fluoridated water could be causing their child's wild behavior. It took me almost two decades to fully discover this, partly because his intolerance to chemicals continues to increase and worsen as he ages.

One might think that we should move to a non-fluoridated area, but Kyle's job took many years to cultivate and was tailor-made for him, with his unique abilities and disabilities. It is in the heart of, and surrounded by, fluoridated water districts. He travels to work on Metro Access (a transportation service for disabled persons) which only serves areas in King County that are served by regular buses, an area almost entirely fluoridated.

The chemical drug fluoride can intensify pain and increase autistic symptoms due to their inefficient detoxification system. The cause of autism is unknown, but most experts agree that genetic vulnerability + environmental exposures = the behavioral symptoms labeled "autism". In the 1980's autism affected 1 in 2,000—now it's 1 in 110. Countless parents have reported improvement of their child's behavior and school success by reducing their child's toxic load and providing chemical-free food and fluoride-free water.

Every medication has a risk, including fluoride, but only one medication is delivered to everyone regardless of health status, regardless of vulnerability, regardless of consent, regardless of dose and regardless of individual tolerance. Our babies, children and vulnerable populations need our utmost protection and conservatism from ALL chemicals.

It is unconscionable to add a toxic drug to something so basic to survival as water when there is any chance whatsoever that doing so might harm even a single child and make that water undrinkable and unusable to those with chemical intolerances. There is simply no drug that is safe for everyone. No chemical or drug is benign, not even fluoride.

As a person with a developmental disability, a serious medical condition, and completely reliant on others to protect him, the refusal of public servants to recognize the toxicity and harm of fluoridation threatens every aspect of Kyle's right to life, liberty and happiness.

LINDA MARTIN, SNOQUALMIE, WASHINGTON

January 11, 2010

To the Washington Supreme Court:

Fluoridation harms me and my family and deprives me of my home. The Fifth Amendment to the US Constitution guarantees that I will not be deprived of property without due process of law. However, I have been forced to move when governments have fluoridated water going to my home. I have not had money to appeal to the Courts, so I have sold my belongings, uprooted my family, and moved to a community which does not fluoridate the water.

If they start fluoridating the valley where I live now, it will be devastating. I will have to move further away from the only family I have, who help me support my autistic son, and will have even more difficulty finding work. Basically, what this all boils down to is a lack of freedom, poverty, unavoidable pain and social isolation.

I can't live where I want to. I can't drink what I want to. I can't eat what I want to. I can't settle down and get comfortable anywhere because I don't know when governments will start fluoridating my water. Even food, which is often high in fluoride, gives me long-term health problems due to the fact that I'm very sensitive to fluoride. I cannot bathe in fluoridated water either. I have skeletal pain, joint pain, skin rashes, gastro-intestinal, vision, memory and thyroid problems when exposed to fluoride.

For example, during a work potluck on April 24th my heel started aching. I limped out of there, and I'm still limping today. I ate at the potluck because I was afraid of insulting my employer who was anxious for me to try the food and was sitting there watching me eat. If I tell people I can't handle fluoride, they think I'm a nut. This affects all my relationships, and in general has turned me into a hermit. I am having major health issues due to fluoridation, and I can't mention it to anyone. So naturally, they think I'm weird because I can't explain why I make the decisions I do.

I have to live in a rural area far from my relatives and my work, which is very expensive, time-consuming and exhausting. I have to spend a lot of time trying to figure out what food and drink is safe. I send countless emails and make countless phone calls to find out water sources for companies that manufacture food and drink so I can check the fluoride status. If I can't get answers, or they use multiple manufacturing sites, I can't take the chance. My diet is somewhat monotonous as a result. I buy a lot of local farm produce which I'm sure did not get watered or manufactured with fluoridated water.

Please take action to prevent the spread of fluoridation. People like me need somewhere to live and thrive.

BILL OSMUNSON, DDS, MPH

Dr. Willard "Bill" Osmunson is an author, researcher, educator, and public health dentist. For the first 25 years of his dental practice, Dr. Osmunson promoted the fluoridation of water. He thought he could see the benefits of drinking fluoridated water in his patients' teeth. After careful review of the scientific evidence, he concluded that higher rates of dental decay correlated not with fluoridation but with low income, general poor health, and bad diet. He concluded that fluoridation not only did not reduce caries rates but that it had harmful side effects.

Dr. Osmunson points out that there are significant increases in fluoride exposure from sources other than drinking water such as foods and beverages made with fluoridated water, pesticides and fumigants, and fertilizers, that excess fluoride intake causes harm, and that there is a failure on the part of government regulatory agencies to accept jurisdiction over the exposure, dosage, benefits, and risks of fluoride ingestion. He concludes that we should put an end to water fluoridation.

View Dr. Osmunson's YouTube video at
http://www.youtube.com/watch?v=_Ys9qlcvKGk.

See an article by Dr. Osmunson entitled "Water Fluoridation Intervention: Dentistry's Crown Jewel Or Dark Hour?" Fluoride 40(4) 214-221, Oct-Dec 2007,
http://www.fluorideresearch.org/404/files/FJ2007_v40_n4_p214-221.pdf.

DR. GERALD H. SMITH, M.D.

Doctor Gerald H. Smith is a medical doctor and a recognized international authority on craniomandibular somatic disorders with a focus on resolving chronic pain. He is the author of a landmark textbook, Cranial-Dental-Sacral Complex and the first research in the world to radiographically document cranial bone movement by means of the Dental Orthogonal Radiographic Analysis System, which he developed. Doctor Smith also developed and patented the worlds first cranial motion precision attachment to permit cranial motion in fixed bridgework that crosses the maxillary mid-line.

Doctor Smith is also the originator of the Occlusal Cranial Balancing Technique, the world's first occlusal system to balance cranial bone and spinal alignment. He has also contributed equally important books,

Reversing Cancer, Headaches Aren't Forever and Alternative Treatments For Conquering Chronic Pain. His latest book presents a major paradigm shift by integrating osteopathic, chiropractic, dental, medical, physical therapy and nutritional concepts.

Doctor Smith's 30 plus years of clinical research has uncovered several of the major missing links for the cause of chronic pain. He was an invited speaker at Walter Reed Army Medical Hospital, Yonsi Memorial Hospital in Seoul Korea, Holistic Medical Association and other prestigious meetings. He is presently on the board of the Holistic Dental Association, a past president and recent past president of the Pennsylvania Craniomandibular Society. Doctor Smith has a specialty practice in chronic pain, nutrition and dental orthopedics/orthodontics in Langhorne, Pennsylvania.

Learn more about Dr. Smith by viewing his web site at <http://www.icnr.com/GeraldHSmith.html>.

He is author of the landmark textbook for professionals, Cranial-Dental-Sacral Complex, and the best seller, Headaches Aren't Forever, written for the layperson

Dr. Smith is opposed to the fluoridation of public water because of the harms which may result therefrom.

FLUORIDE CLASS ACTION

Fluoride Class Action is a consumer-environmental legal group that opposes using public water systems to medicate people and opposes fluoridation foremost. The work of Fluoride Class Action may be viewed by going to the following web site: <http://fluoride-class-action.com>.

It is the aim of Fluoride Class Action to serve as a repository of information about how to proceed with all kinds of fluoride cases, to make this information available to fellow attorneys, to inspire class action and consumer protection attorneys to sue the municipalities which deliver fluoridated water. Suits would be for injunction and damages.

The steps are as follows: To deliver a Freedom of Information Request to each water district. To give the districts feedback and point out their misunderstandings regarding fluoridation and tell them how they can reduce or avoid liability for the coming class-action personal injury cases. Advise them that they need to send notices to parents of infants and those with kidney disease not to consume the water.

I predict the first big case will involve the widows of men who died 20 years before their time of kidney disease. If those men were drinking fluoridated water, it almost certainly shortened their lives. Regarding every child with moderate or severe dental fluorosis, we can be very sure that the 1.0 mg per liter of fluoride that child has consumed made his/her flurosis worse than they otherwise would have been. Remember how bad you felt about your childhood pimples? Kids feel that bad about the white and tan specks on their teeth.

The plan is to put municipalities formally on notice of potential liability. Mayors and county executives will be warned to make sure that their insurance policies will cover the coming suits.

If possible direct contact with insurance companies will be made. They will be told of their possibly very costly exposure. I am a licensed Washington life and disability insurance agent. As such I have certain duties under my code of ethics, It is my duty to inform insurance companies, even those for whom I do not work, whenever I observe potential liability. This benefits both company and the public.

It is predicted that insurance companies will begin to limit and terminate coverage for fluoride related cases. The foolish practice of water fluoridation will finally come to an end.

Some suits may be necessary. After a few big losses, fluoridation will go the way of asbestos, tetraethyl lead, lead paint, DDT, and mercury thermometers.

One hopes that merely threatening to sue will be enough to do the trick, but there will be suits. There is a big pile of money at issue here, so fluoridation will only go kicking and screaming.

On the other hand, my approach with the companies that pump out the fluoride scrubber liquor is that they could make much more profit by utilizing their capital in healthier directions.

One is also trying to help these companies and their investors. If the potential liability they face is added up, those costs would be so astronomical that we would have to declare those companies bankrupt. When they get do get sued and do go bankrupt, government and tax payers will be stuck with the cost of cleaning up the pollution left behind.

OFFICE RECEPTIONIST, CLERK

To: James Robert Deal; GeraldSteel@Yahoo.com; wbloor@cityofpa.us; pearr@foster.com;
rodff.forks@centurytel.net; sheilag@awcnet.org
Subject: RE: Corrected - Motion to Add Amici to IAOMT Brief

Rec'd 2/19/10

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: James Robert Deal [mailto:JamesRobertDeal@jamesdeal.com]
Sent: Friday, February 19, 2010 11:02 AM
To: OFFICE RECEPTIONIST, CLERK; GeraldSteel@Yahoo.com; wbloor@cityofpa.us; pearr@foster.com;
rodff.forks@centurytel.net; sheilag@awcnet.org
Subject: Corrected - Motion to Add Amici to IAOMT Brief

2-19-10

(Corrected) Motion to Add Amici to IAOMT Brief

To:

Washington Supreme Court

Thank you for pointing out that I had omitted Appendix A

Also to:

Counsel for Washington Dental Service Foundation, LLC, and Water Fluoridation Science Committee:

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Counsel for City of Forks:

William Rodney Fleck

City of Forks

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Forks WA 98331

by first class mail and by e-mail to rodf.forks@centurytel.net

Attached, please find my:

(Corrected) Motion to Add Amici to IAOMT Amici Brief 82225-5

Sincerely,

James Robert Deal , Attorney, Loan Officer

James@JamesRobertDeal.com

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